

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ERIC MCCABE,**  
*Plaintiff,*

**V.**

**STONE BRIDGE ENERGY PARTNERS  
LLC, BRUCE BERNARD, and ROBERT  
TOKER,**  
*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§

**C.A. No. \_\_\_\_\_**

**NOTICE OF REMOVAL**

Notice is hereby given that, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446; and Southern District of Texas Local Rule 81, Defendants Stone Bridge Energy Partners LLC, Bruce Bernard, and Robert Toker (collectively, “Defendants”) hereby remove this action from the 295th Judicial District of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and show as follows:

**STATE COURT ACTION**

1. On May 12, 2017, Eric McCabe (“Plaintiff”) filed suit against Defendants in the 295th Judicial District Court of Harris County, Texas in an action styled *Eric McCabe v. Stone Bridge Energy Partners LLC, Bruce Bernard, and Robert Toker*, Cause No. 2017-32326 (the “State Court Action”).

2. Plaintiff has asserted numerous claims against Defendants arising from his employment with Stone Bridge Energy Partners LLC (“Stone Bridge”) including claims for: (1) breach of contract; (2) violations of the Fair Labor Standards Act; (3) fraud and fraudulent inducement; (4) quantum meruit; (5) promissory estoppel; and (6) unjust enrichment. **Exhibit B.2**, Pl.’s Original Pet., 4-9. Plaintiff seeks monetary damages in excess of two-hundred

thousand dollars (\$200,000), as well as exemplary damages and attorneys' fees. *See Exhibit B.2*, Pl.'s Original Pet., 1, 10.

3. Defendants filed an Answer to Plaintiff's Original Petition on June 30, 2017. *Exhibit B.4*, Defs.' Ans. to Pl.'s Original Pet. Defendants deny each and every one of Plaintiff's allegations and deny Plaintiff is entitled to any relief from Defendants.

### **FEDERAL QUESTION JURISDICTION**

4. This suit involves a controversy and claim by Plaintiff for a violation of the Fair Labor Standards Act, which arises under the laws of the United States over which the District Courts of the United States have original jurisdiction pursuant to the provisions of 28 U.S.C. § 1331. As such, this controversy and claim may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441(a).

5. Plaintiff is suing Defendants to recover allegedly unpaid minimum wage and overtime compensation under the Fair Labor Standards Act (the "FLSA"), 29 U.S.C. § 201 *et seq.* Specifically, Plaintiff alleges Defendants failed to pay Plaintiff minimum wages or overtime compensation at one and one-half times Plaintiff's regular rate of pay for work in excess of forty (40) hours a week in violation of the FLSA. Therefore, removal of this action to this Court is proper.

### **SUPPLEMENTAL JURISDICTION**

6. The state law claims asserted by Plaintiff do not deprive this Court of jurisdiction. Plaintiff's state law claims and FLSA claim are based on the same underlying facts and circumstances that Plaintiff allegedly did not receive compensation for services rendered. Accordingly, even if this case was brought in federal court this Court would have supplemental jurisdiction over the state law claims since they arise from the same set of facts and

circumstances. *See* 28 U.S.C. § 1367(a). Therefore, this action is one over which this Court would have had original jurisdiction had it been filed initially in this Court. Consequently, removal of this action from the 295th Judicial District Court of Harris County, Texas is proper.

### **PROCEDURAL REQUIREMENTS**

7. This action is properly removed to this Court, as the State Court Action is pending within this district and division. 28 U.S.C. § 1441(a).

8. This removal is timely. Defendant Bruce Bernard was served with the Original Complaint on June 10, 2017, and Defendant Stone Bridge was served with the Original Complaint on June 12, 2017. Although Defendant Robert Toker has not been served with the Original Complaint as of the filing of this Notice of Removal, he, as well as the other Defendants, have already answered. Accordingly, this removal is timely under 28 U.S.C. § 1446(b) because all Defendants file this notice of removal less than thirty (30) days after they were served.

9. Pursuant to Southern District of Texas Local Rule 81, and 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by copies of the following:

- a. An index of matters being filed is attached hereto as **Exhibit A**;
- b. The state court docket sheet, all pleadings asserting causes of action, all answers to such pleadings, executed process; and all orders signed by the state judge are attached hereto as **Exhibit B.1-B.4**;
- c. A list of all counsel of record, including addresses, telephone numbers and parties represented is attached hereto as **Exhibit C**; and
- d. The civil cover sheet and attachment are attached hereto as **Exhibit D**.

10. Plaintiff demanded a jury trial in his Petition and he has paid the requisite fees for the same.

11. As the removing parties, Defendants Stone Bridge Energy Partners LLC, Bruce Bernard, and Robert Toker consent to this removal.

12. Simultaneously with the filing of this Notice of Removal, Defendants are filing copies of this Notice of Removal in the 295th Judicial District of Harris County, Texas, pursuant to 28 U.S.C. § 1446(d). Defendants will promptly give all parties written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d).

### **CONCLUSION**

13. For these reasons, Defendants ask the Court to remove this suit to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

/s/ David M. Gregory

DAVID M. GREGORY

Southern District of Texas No. 24397

Texas State Bar No. 24007274

LOCKE LORD LLP

600 Travis, Suite 2800

Houston, Texas 77002

(713) 226-1200 (Telephone)

(713) 229-2501 (Facsimile)

dgregory@lockelord.com

**ATTORNEYS FOR DEFENDANTS STONE  
BRIDGE ENERGY PARTNERS LLC, BRUCE  
BERNARD, AND ROBERT TOKER**

**OF COUNSEL:**

EVAN C. BLANKENAU  
Southern District of Texas No. 2507901  
Texas State Bar No. 24092142  
LOCKE LORD LLP  
600 Travis, Suite 2800  
Houston, Texas 77002  
(713) 226-1200 (Telephone)  
(713) 229-2501 (Facsimile)  
[evan.blankenau@lockelord.com](mailto:evan.blankenau@lockelord.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of June 2017, the foregoing document has been served on the Plaintiff's counsel of record pursuant to the Federal Rules of Civil Procedure:

C. Larry Carbo, III  
Julie R. Offerman  
CHAMBERLAIN, HRDLICKA, WHITE, WILLIAMS & AUGHTRY  
1200 Smith Street, Suite 1400  
Houston, Texas 77002  
(713) 356-1712  
(713) 658-2553  
larry.carbo@chamberlainlaw.com  
julie.offerment@chamberlainlaw.com

/s/ Evan C. Blankenau

Evan C. Blankenau